

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KENNETH DRAGOS, INDIVIDUALLY :	CIVIL ACTION
AND ON BEHALF OF THOSE :	
SIMILARLY SITUATED, :	CLASS ACTION
205 Barnhill Road :	
Perkasie, PA. 18944, :	
Plaintiffs :	12-cv-
v. :	BREACH OF CONTRACT
CHASE HOME FINANCE, LLC, :	15 U.S.C. § 1692a, ET SEQ.
1820 East Sky Harbor Circle South :	
Phoenix, AZ 85034, :	
Defendant :	

CLASS ACTION COMPLAINT IN CIVIL ACTION

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CLASS ACTION COMPLAINT IN CIVIL ACTION¹

I. PARTIES

1. Plaintiff, Kenneth Dragos (“Dragos”), is an individual residing at the address set forth in the caption. Plaintiff is a citizen of the Commonwealth of Pennsylvania, and resident of Perkasio, County of Bucks.

2. Plaintiff is a mortgagor of a mortgage which is and has been serviced by defendant, Chase Home Finance, LLC (hereinafter referred to as “Chase”). Plaintiff is the owner of 205 Barnhill Road, Perkasio, PA 18944.

3. Plaintiff is a consumer and all transactions which form the bases of this complaint are consumer and consumer credit transactions which arose solely for personal, household, or family use and purpose. Plaintiff brings this action on behalf of himself and on behalf of a class of mortgagors of Chase, as more fully defined below.

¹This is the second case for Plaintiff filed in this Court, the first case docketed as *Kenneth Dragos, For Himself and For All Others Similarly Situated v. Chase Home Finance, LLC*, 11-cv-04378 HB, incorporated herein by reference as if set forth herein at length. The first *Dragos* case was filed on July 8, 2011. After a confidential settlement on an individual basis, the case was dismissed on September 20, 2011. The causes of action in both cases are similar. In other words, Chase Home Finance, LLC is alleged to be systemically conducting the same wrongful behavior as set forth in the first *Dragos* case.

4. This suit is filed on behalf of Plaintiff, individually, and on behalf of a Class (the “Class”). The Class of which Plaintiff is representative is comprised of persons who are now or have been mortgagors of loans serviced by Chase and who have been wrongfully charged late charges on mortgage payments made timely, and before the date on which later charges would have become applicable. The names and addresses of the individual members of the Class are not yet known. The term “Plaintiff” is intended to refer to Plaintiff, Kenneth Dragos, and the members of the Class, collectively, unless the context specifically indicates otherwise.

5. It is believed that Chase is a corporation with its principal place of business in New York. Chase transacts the business of servicing² mortgages, *inter alia*, throughout the United States, including the Commonwealth of Pennsylvania. It is believed that Chase services approximately 6,300,000 mortgages.

6. Chase is believed to be a wholly owned subsidiary of JP Morgan Chase Bank, N.A., headquartered in New York City. Nonetheless, Chase is believed to be a “debt collector” as that term is defined by 15 U.S.C. §1692a(6)(F).

II. JURISDICTION AND VENUE

7. This Class Action Complaint in Civil Action is properly within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania because of the defendant’s violations of 15 U.S.C.A. §1692, *et seq.*, the *Fair Debt Collection Practices Act*

² The servicer of a mortgage is one who is responsible for certain activities involved in mortgage administration and operations, such as receiving payments, ensuring hazard insurance on the property, overseeing payment of taxes (and hazard insurance), imposing late fees and other appropriate and applicable charges, and making distribution of proceeds to the real or beneficial owner of the mortgage, most commonly referred to as the “investor”. Often, the “servicer” is not the real owner of the mortgage. In consideration therefor, the servicer derives for its own benefit fees, commissions, and other remuneration from the real owner of the mortgage. One of the benefits of charging late fees is that the servicer keeps late fees that are paid.

("FDCPA"). *See* 15 U.S.C. §1692k(d). The activity complained of occurred in this district, involving residents and citizens of this district, and real property situated in this district.

8. In the alternative and/or the cumulative, this Class Action is properly within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1322(d)(2), for the following reasons:

- a. It is believed and therefore averred that the total value of the case exceeds \$5,000,000.00³, exclusive of interest and costs;
- b. The putative Class consists of members who are citizens of states different than Plaintiff;
- c. It is believed and therefore averred that more than two-thirds (2/3) of the putative Class members are citizens of states other than Pennsylvania;
- d. Defendant is a citizen of a state other than Pennsylvania;
- e. The claim asserted does involve issues of an interstate interest.

9. Venue is proper within the United States District Court for the Eastern District of Pennsylvania for:

- a. Defendant conducts business in this district;
- b. The representative Plaintiff resides in this district and the real estate which is the basis of the Class representatives' action is in this district;
- c. Defendant has maintained significant contacts in this district, directly and indirectly, and is believed authorized to do business in this district.

³If Chase wrongly charges late charges on 1% of its mortgages, its bottom line profits benefit to an amount in excess of \$50,000,000 per year.

III. SUMMARY STATEMENT OF THE CASE

10. The case arises because of a systemic practice by Chase involving its servicing of mortgages and its imposition of certain late charges when the respective monthly payments for which the late charges have been imposed were, in fact, current.

11. The applicable mortgage document, the Note, provides that payments for the monthly mortgage are due on a specific date; however, late charges are not applicable if the mortgagor(s) makes a full⁴ monthly payment by the end of the fifteenth day after the date due, or after sixteen (16) days. Thus, if the mortgage payment is due on the first of the month, if the full monthly payment is made by the end of the 16th of the month, no late charge is permitted or applicable. *See* Exhibits “H” and “I”, attached hereto.

12. Chase is charging for late charges when, in fact, the Plaintiff and members of the Class have made full monthly mortgage payments when due and prior to the date upon which a late charge is applicable.

13. Furthermore, when, in a month(s) subsequent to the wrongful late charge, Chase pays itself the late charge out of the then-current full monthly payment for the succeeding month, the latter payment is then deemed to be “short” by Chase, and a portion of each ensuing payment is used for the prior month’s wrongful late charge, perpetuating a continuing series of late charges, all emanating from the initial, and subsequent, wrongful late charge.

14. In fact, the collection of “late” fees and similar charges, and the application thereof, are governed by law and by contract, *inter alia*. The contractual provisions for “late fees” are set in mortgage documentation consisting of: The security agreement (often referred

⁴Monthly mortgage payments for residential mortgage generally consist of principal and interest; often, these monthly mortgage payments also include “escrow” which consists of advanced payments for homeowners’ insurance and/or property taxes.

to as the “Trust Instrument” or “Mortgage”) and the Promissory Note. This documentation provides for late charges upon the occurrence of specifically defined payment date deadlines.

15. Furthermore, the collection of late fees by the servicer is often reiterated in the monthly (or other period basis) statement or coupon, as a reminder to the mortgagor.

16. Regardless of the contractual restrictions imposed upon the mortgage servicer not to impose a late charge until after the date certain, defendants have prematurely imposed late charges upon the accounts of its mortgagors, and/or have misapplied principal and interest payments, and possibly other ascribable payments as a result of the wrongful taking of money in the guise of late charges.

17. As a matter of course and policy, however, Chase systemically and regularly imposes late charges upon payments received by Chase that were actually paid on time.

18. These wrongful charges, payment of these late charges, and other wrongful acts such as misapplication of payments, once imposed by Chase, are required to be paid by the borrowers, otherwise the loan is considered in default, and the mortgagor(s) become subject to dunning efforts to collect, misapplication of payments, and may even suffer foreclosure.

19. Thus, Plaintiff, on behalf of himself, and all others similarly situated, seeks to put an end to these oppressive and unconscionable practices which breach the contractual agreements between the parties and otherwise violate law. To accomplish this objective, Plaintiff has come to this Court seeking appropriate damages.

IV. CLASS ACTION ALLEGATIONS

20. This case is properly maintainable as a Class Action pursuant to and in accordance with Federal Rule of Civil Procedure (“F.R.C.P.”) 23(a), *et seq*:

- (1) On belief, the Class is so numerous that joinder of all members is impractical.
- (2) There are substantial questions of law and fact common to the Class.
- (3) The claims of the representative plaintiffs are typical of the claims of the members of the Class.
- (4) The representative plaintiffs will fairly and adequately protect the interests of the Class.

21. This case is properly maintainable as a Class Action pursuant to and in accordance with F.R.C.P. 23(b)(3).

- a. The issues of fact common to the members of the Class, as required by Local Rule of Civil Procedure (“Local Rule”) for the Eastern District of Pennsylvania, 23.1(b)(2)(D), are set forth below in paragraph 15.b.(1), et seq.
- b. The questions of law common to the members of the Class, as required by Local Rule 23.1(b)(2)(D) are set forth below in paragraph 15.
- c. The questions of law and the questions of fact predominate for the Class over any questions of law and/or fact affecting only individual members of the Class.
- d. A Class action is superior to any other action for the fair and efficient adjudication of the controversy as the commonality of factual and legal questions for the Class are overwhelmingly predominant.
- e. As the questions of law and of fact are common to the members of the Class, and considering the prospective individual damages at issue, the interests of the members of the Class will best be controlled and served by this action.

f. There is no reason why the litigation should not proceed in this particular forum.

g. There are no unusual difficulties foreseen to be encountered in the management of this Class action.

h. Plaintiffs are not aware of any litigation involving the captioned parties with the issues as set forth herein.

22. The claim by plaintiff, for himself and for and on behalf of the members of the Class, is justified as a Class Action for the following reasons:

a. Although the size of the Class is not specifically known, it is believed that the number of appropriate members of Class is substantial, believed numbering in the tens of thousands⁵.

b. The basis upon which plaintiff claims to be an adequate representative of the Class is as follows:

(1) Plaintiff is a homeowner, and mortgagor of the mortgagee of which defendant, Chase, is the servicing entity for the real mortgagee in interest (the investor). All members of the Class are/were (at all times relevant) homeowners, and mortgagors with defendant, Chase, servicing the respective mortgages;

(2) Plaintiff granted a mortgage to Chase, to its predecessor(s) in interest. At the time of the mortgage transaction, Plaintiff executed various documents in favor of the mortgagee, including: Mortgage and Note, true and correct copies of which are believed filed of record with the Bucks County Recorder of Deeds, and they are incorporated herein by reference.

⁵It is believed that Chase services approximately 6,300,000 mortgages

(3) The full monthly mortgage for the subject loan and mortgage is \$2,550.13.

(4) The Note specifically provides that the mortgage payments are due on the first of every month. The Note further provides that, if payments are not received within fifteen (15) days after the due date, and, therefore, by the end of the sixteenth (16th) of every month, a later charge will be imposed. All members of the Class had granted to Chase, or a predecessor in interest (hereinafter referred cumulatively referred to (“Chase”)), a mortgage and had executed a note in favor of Chase

(5) At all times relevant, Plaintiff has made his mortgage payments on a current basis, making all applicable monthly mortgage payments to be received by Chase prior to the 17th of the respective month.

(6) Plaintiff has made the most recent payments as follows:

<u>When Paid^{6,7}</u>	<u>Payment Amount</u>	<u>Month Paid For</u>
October 13, 2011	\$2,550.13	October, 2011
November 14, 2011	\$2,550.13	November, 2011

(7) Therefore, Plaintiff has made timely monthly mortgage payments to Chase for the months of October and November of 2011, and they were charged late charges therefor. *See* Exhibits “A” and “B”, reflecting the payments for October and November, 2011, and the wrongful charge for late fees of 102.73 for each month, and the late charge wrongly applied.

⁶Because of continuing charges for late charges and misapplications by Chase, accompanied by Chase’s refusal to accept payments from Plaintiffs’ bill paying service, Plaintiff has been making his current payments for December, 2011, and January, 2012, through Plaintiff’s attorney. Thus, although made timely, these payments are being received by Chase after a prolonged transmittal period from Chase’s attorney.

⁷The checks that are the subject of these payments have been “date-stamped” by Chase conclusively evidencing that the monthly payments were received prior to the date on which late charges would become applicable.

(8) Because of the wrongful charging of the timely payments, Chase has been misapplying the monthly payments, placing the \$2,550.13 into suspense when a late fee is deducted therefrom.

(9) Therefore, Chase has been wrongfully charging plaintiff for late fees on payments received by Chase prior to the 17th day of the respective month.

(10) All members of the Class made timely mortgage payments to Chase which, although received by Chase on or before the day prior to the day for which late fees were permitted to be charged, Chase nonetheless charged late fees to the members of the Class.

(11) By law and by contract, these late fees were/are not permitted to be imposed by Chase upon the plaintiff and upon any member of the Class;

(12) State law, regardless of whatever state, does not permit the charge of such late fees upon the mortgagors, the members of the Class;

(13) For each such payment by any mortgagor, Chase has overcharged by the percentage amount of each late fee;

(14) Chase is misapplying portions of the current monthly mortgage payments to late fees;

(15) All members of the Class have suffered through the same scenario, with variations solely in the percentage and dollar amounts of late fees, and the due date prior to the date the late fee became appropriate. That which is not a variable in this same scenario, however, is that each member of the Class made mortgage payments received on or about the last date before a late fee was permitted, and each member of the Class nonetheless was charged a late fee;

(16) All members of the Class have suffered through the same scenario, with variations solely in the percentage and dollar amounts of late fees, and the due date prior to the

date the late fee became appropriate. That which is not a variable in this same scenario, however, is that each member of the Class made full mortgage payments based on a timely basis, but were charged late fees;

(17) At all times relevant, the respective members of the Class were caused to pay or were otherwise charged for these wrongful increments to their monthly post-petition mortgage payments.

(18) Every month, Chase's attorney sends a letter similar to the letter attached hereto as Exhibit "F", notifying Plaintiff's attorney that Plaintiff is two (2) months in arrears, even though Plaintiff is current.

(19) Every month, Chase sends a letter similar to the letter attached hereto as Exhibit "G", notifying Plaintiff that Plaintiff is two(2) months in arrears, even though Plaintiff is current.

23. The issues of fact, therefore, for all members of the Class are the same as set forth above, with minor, not substantial, variation.

24. The questions of law governing the rights of each member of the Class are the same as they relate to the defendants:

a. Are the charges for "late fees" ("these wrongful late fees") charged or imposed for timely full monthly mortgage payments received on or before the last day before which such late fees are appropriate excessive, unconscionable, unreasonable, and/or otherwise illegal or improper?

b. Is defendant, Chase, negligent in imposing these wrongful late fees?

c. Is defendant, Chase, grossly negligent and/or reckless in imposing these wrongful charges?

- d. Has defendant, Chase, imposed these wrongful charges knowingly and intentionally?
- e. Are these systemic charges intentional?
- f. Are these wrongful charges "reasonable" and permissible within the context of the mortgage documentation?
- g. Has Chase been under an obligation imposed by equity and/or law not to impose these wrongful charges?
- h. Has Chase breached the grant of authority provided by the mortgagors in the mortgage documents by imposing these wrongful charges?
- i. Has Chase breached its express contractual obligations to plaintiffs by the imposition of these wrongful charges?
- j. Has Chase violated 15 U.S.C. §1692, *et seq.*, by charging these wrongful charges which have no basis in law or contract?
- k. Has Chase engaged in unfair trade practices to plaintiff?
- l. Has Plaintiff suffered damages as a direct and/or proximate result of the wrongful charges?
- m. If so, is plaintiff entitled to recovery of damages as follows?
 - (i) compensatory damages;
 - (ii) other special damages;
 - (iii) punitive damages;
 - (iv) statutory damages;
 - (v) treble damages or damages as a multiple of compensatory and other special damages;

- (vi) costs;
- (vii) attorney's fees;
- (viii) other relief as the Court may deem appropriate.

n. Is defendant, Chase, required by law or equity to disgorge these improperly charged fees and any other fees derived as a result of this activity?

o. Have the members of the Class been adversely affected as Plaintiff, and, if plaintiff has been injured as described above, have the members of the Class been so injured?

V. THE CLASS

25. Paragraphs one through and including twenty-four above are incorporated herein by reference as if set forth herein at length.

26. The above-named Plaintiff brings this action on behalf of himself and:

All persons in the United States of America whose mortgages are, were or have been serviced by Chase, and upon whom Chase imposed late charges when, in fact, applicable monthly mortgage payments have been made on a timely basis and prior to the time when late charges may be lawfully and/or contractually imposed.

VI. CAUSES OF ACTION

COUNT I - FAIR DEBT COLLECTION PRACTICES ACT
CLASS ACTION – PLAINTIFFS V. CHASE

27. The averments of paragraphs one through and including twenty-six above are incorporated herein by reference as if set forth herein at length.

28. Defendant, Chase, is a "debt collector" as defined by 15 U.S.C. 1692(a)(6) of the "Fair Debt Collection Practices Act ("FDCPA"). Chase's debt collection activities utilize the mails and interstate commerce.

a. The mortgage was originally given to Madison Funding, Inc., A Maryland Corporation. The mortgage is of record in the Office of the Recorder of Deeds of Bucks County, Pennsylvania, and is incorporated herein by reference;

b. The mortgage was assigned – date unknown – to Mortgage Electronic Registration Systems, Inc. (“MERS”) prior to July 23, 2009;

c. By assignment dated July 23, 2009, MERS assigned the mortgage to U.S. Bank National Association, as Trustee. *See* Exhibit “C”, a true and correct copy of the filed assignment;

d. At a point in time, unknown to Plaintiff at this time, Chase was then assigned the mortgage and/or the servicing rights;

e. As the assignment from MERS was when the mortgage was already seven (7) months in arrears, and Chase was apparently not yet in the recorded chain of title, Chase received the mortgage when the Plaintiff was in default. Therefore, Chase is a “debt collector” as defined by 15 U.S.C. 1692a(6)(F).

29. Plaintiff is a consumer as defined by 15 U.S.C. §1692(a)(3) of the "Fair Debt Collection Practices Act" ("FDCPA").

30. Defendant, Chase, is and has been in violation of FDCPA, §1692e, thereof, in that Chase has engaged in and conducted activities with respect to the collection of the respective debts of the Plaintiff and respective members of the Class by:

- a. Deceptive representations or means;
- b. False representations or means;
- c. Misleading representations or means;
- d. Attempting to collect illegally incurred late fees.

31. Defendant, Chase, is and has been in violation of FDCPA, §1692f, thereof, in that Chase has engaged in and conducted activities with respect to the collection of the respective debts of the respective members of the Class by:

- a. Collecting or attempting to collect amounts not expressly authorized by the agreement creating the debt;
- b. Collecting or attempting to collect amounts not expressly authorized by law.

32. Defendant, Chase, is and has been otherwise in violation of the FDCPA, and specifically by the following specific acts and activities:

- a. Plaintiff has been current with his full monthly payments;
- b. Plaintiff's full monthly payments have been made on a current basis, paid prior to the date upon which late charges would have accrued;
- c. Plaintiff's full monthly payments have been made on a current basis, paid prior to the date upon which late charges could have been contractually and lawfully imposed
- d. Plaintiff made a full monthly mortgage payment in the amount of \$2,550.13 for the month of October, 2011, received by Chase on October 11, 2011. *See* the date-stamp of "Oct 11 2011" on Exhibit "A";
- e. Plaintiff made a full monthly mortgage payment in the amount of \$2,550.13 for the month of November, 2011, received by Chase on November 9, 2011. *See* the date-stamp of "Oct 11 2011" on Exhibit "B";
- f. *See* Exhibits "D" and "E"⁸, Plaintiff's bank statements illustrating that the October and November checks were put through Plaintiff's bank account on October 13, 2011, and November 14, 2011, respectively;

⁸The Plaintiff's account number has been deleted for purposes of security.

g. The Chase generated monthly statements for the respective month succeeding the respective payments shows that the payments for October and November, 2011, were credited to Chase on the 17th day of the respective months;

h. Therefore, Chase held each payment until the 17th of the month before crediting same, and, when finally crediting the respective payment, Chase charged a late fee of \$102.73 for each of the October and November, 2011 timely payments.

i. The statements appear to further indicate that other unwarranted charges have been imposed, such as on the "Mortgage Loan Statement" dated December 7, 2011, showing "Miscellaneous or Fees" of \$125.00 for "corporate advances", generally implying that Chase is repaying itself for a charge for which Plaintiff has no idea, and strict proof of the reason for and efficacy of such charge(s) is demanded.

33. There is a history of Chase's wrongful charges and misapplication of payments as more fully set forth in the matter of *Kenneth Dragos, And All Others Similarly Situated v. Chase Home Finance, LLC*, 11-cv-4378 HB, incorporated herein by reference.⁹

34. To corroborate the wrongful charges continually imposed, counsel for Chase, by fax dated December 12, 2011, attached hereto as Exhibit "F", advises that Plaintiff is past due two months, due for the October, 2011, payment.

35. To corroborate the wrongful charges continually imposed, Chase, by letter dated December 28, 2011, attached hereto as Exhibit "G", advises that Plaintiff is past due two months, now for November of 2011.

⁹This case was filed on July 8, 2011 and was dismissed pursuant to a Stipulation of Dismissal filed with and approved by the Court on September 20, 2011. The Stipulation of Dismissal was pursuant to an amicable resolution of the issues of the case.

36. Therefore, and each month beginning at least in October, of 2011, Chase began to charge late fees against the Plaintiff's account although all payments were made in the proper amounts and timely;

37. Other charges appear to be wrongfully added, as well, to the Plaintiff's account such as are illustrated on the monthly statements attached hereto.

38. The wrongful charges reflected in the monthly statements have and continue to cause confusion and misunderstanding;

39. The wrongful charges as reflected in the monthly statements and the monthly (and more frequent) letters of default are intended to cause confusion, misunderstanding and to generate more income than that to which Chase is entitled.

40. These charges and the attempt to collect them are illegal and improper and violative of the FDCPA as set forth above.

41. Plaintiff and the members of the Class are entitled to damages pursuant to 15 U.S.C. 1692k., including

- a. Actual damages sustained by each plaintiff as a result of Chase's failure to comply with FDCPA;
- b. The lesser of \$500,000 or 1 per centum of the net worth of the defendant, Chase,
- c. Reasonable attorney's fees and costs;
- d. If the Court should find, treble damages; and
- e. Injunctive relief to preclude Chase from imposing these charges in now and in the future.

WHEREFORE, Plaintiff prays this Honorable Court grant appropriate damages,

including, but not limited to

- A. Certifying the Class described, and appointing Plaintiff as representative of the Class, and the undersigned as Class counsel;
- B. Requiring that the Chase pay compensatory damages, restitution, statutory damages, attorney's fees and experts' fees, and punitive damages as appropriate;
- C. Enjoining the Defendant from conducting such violative activity in the future, and
- D. Granting such other relief as the Court may deem appropriate.

COUNT II - UNFAIR TRADE PRACTICES
PLAINTIFF V. CHASE

42. The averments of paragraphs one through and including forty-one (41) above are incorporated herein by reference as if set forth herein at length.

43. Plaintiff is a consumer.

44. Defendant is an entity which has placed its product for sale into the stream of commerce of the United States of America, and made such product available to the consumer in every jurisdiction in which any member of the Class resides.

45. Defendant has advertised, offered for sale or distribution its respective products, including services.

46. Defendant, Chase, has engaged in unfair trade practices, unfair methods of competition, and has practiced other unfair or deceptive acts or practices directly or indirectly adversely affecting the Plaintiff, as described above, in Count I and the factual statement.

The acts and practices include, but are not limited to:

- a. Making false or misleading statements of fact, by silence or otherwise;

b. Knowingly misrepresenting that those late fees were permissible, lawful and contractually appropriate;

c. Knowingly misrepresenting that the other charges related to the wrongful attribution of payments and wrongful charges by Chase, including, but not limited to, certain attorney's fees and costs, for example, are permissible, lawful and contractually appropriate;

d. "Engaging in other fraudulent conduct which creates a likelihood of confusion or of misunderstanding"

e. Engaging in any other conduct deemed to constitute unfair trade practices, unfair methods of competition, or other unfair or deceptive acts or practices.

WHEREFORE, Plaintiff prays this Honorable Court find in favor of Plaintiff and against Chase and grant compensatory damages, statutory damages, treble damages, punitive damages, costs, interest and attorney's fees.

COUNT III – CONTRACT
CLASS ACTION – PLAINTIFFS V. CHASE

47. Paragraphs one through and including forty-six (46) above are incorporated herein by reference as if set forth herein at length.

48. The mortgage contract (including the mortgage and note) by and between plaintiffs and Chase is a generic mortgage contract utilized by numerous mortgagees, mortgage servicers, MERS, Fannie Mae and other related entities.

49. All of the elements of contract are present in the transactions involving the plaintiff, members of the Class, and Chase, to wit:

- a. Offer and acceptance;
- b. Consideration;
- c. Mutual meeting of the minds.

50. It is the contractual obligation of the plaintiff and members of the Class to make timely payments as prescribed by the Note.

51. It is the contractual responsibility of Chase to receive mortgage payments and properly credit the mortgagors therefor.

52. If plaintiff and any member of the Class should make a payment late, to wit: the 17th of the respective month, Chase is entitled to charge a late charge therefor.¹⁰

53. If a late charge is imposed, some mortgage servicers will pay themselves the late charge imposed from the prior month's late payment and take the late charge from the current month's full payment if not included, thus rendering the "current month's full payment" short, by the amount of the "late fee", thus perpetuating "late charges".

54. Such application is in violation of the mortgage contract, specifically paragraph 2, thereof. A true and correct copy of the mortgage contract is attached hereto as "H", and the Note is attached hereto as Exhibit "I".

55. Chase has been charging late fees to persons whose mortgages are serviced by Chase regardless if the payments have been and are timely, made prior to the 17th of the respective month(s), or the correlative deadline before which late fees may be charged.

56. These charges constitute a systemic violation of the generic and universal contract by and between plaintiff and the members of the Class and Chase.

58. Members of the Class have paid these wrongfully imposed late fees.

59. Plaintiff and the members of the Class have been imposed these wrongfully charged late fees which have been attempted to be collected by Chase.

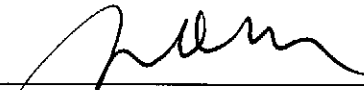
¹⁰ The industry practice is that the servicer, in this case, Chase, is permitted to keep the late charge, even if not the investor or owner of the mortgage. It is believed that Chase is the investor/owner/holder of the mortgage at this time.

60. These charges violate the contract.

WHEREFORE, Plaintiff prays this Honorable Court grant appropriate damages, including, but not limited to

- A. Certifying the Class described, and appointing Plaintiff as representative of the Class, and the undersigned as Class counsel;
- B. Requiring that Chase pay compensatory damages, restitution, statutory damages, as appropriate;
- C. Enjoining the Defendant from conducting such violative activity in the future, and
- D. Granting such other relief as the Court may deem appropriate.

Respectfully submitted:



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